

**Guidelines for the
Solicitation of Mixed Beverages Permittees
by Distiller Representatives in North Carolina**

Effective September 1, 2002

(Amended effective April 1, 2003)

A. Generally. This section applies to the solicitation, directly or indirectly, of a mixed beverages permittee to sell or offer for sale spirituous liquor in North Carolina. Solicitation of a mixed beverages permittee for such purpose other than by an ABC licensed distiller representative and in the manner authorized by these guidelines shall be prohibited.

B. Definitions.

1. Spirits means spirituous liquor as defined in G.S. 18B-101(14).
2. Distiller means any importer, brand owner, manufacturer, rectifier or bottler of distilled spirits.
3. Distiller Representative means any person selling or soliciting spirits on behalf of a distiller.
4. Industry Member includes Distiller Representative and has the same meaning as defined in 4 NCAC 2T.0101(2).
5. Tasting means an amount that is less than the one usually and customarily served to a single patron as a single serving and shall not be construed as consumption for the purposes of 4 NCAC 2S.0212.

C. Permitted Activities. Solicitation by a distiller representative shall be limited to the representative's authorized and assigned brand or brands and may include contact, meetings with, or programs for the benefit of mixed beverages permittee(s) and their employees on the licensed premises of the mixed beverages permittee. A distiller representative may:

1. Distribute directly or indirectly printed educational material, including recipe booklets and brochures (one item per mixed beverages permittee and one item per employee, per visit) that may not be displayed on the licensed premises; and provide film or video presentations of spirits which are essentially educational to mixed beverages permittees and their employees only, and not for display or viewing by customers;
2. Provide to a mixed beverages permittee sample tastings from containers of spirits (1.75L, .750L, .375L) and furnish one, unopened, 50 milliliter sample

container of each brand being promoted if that brand is not sold by the mixed beverages permittee; such containers and sample containers shall be purchased at a North Carolina county or city ABC board; each container and sample container must bear a label affixed by the distiller representative with his or her permit number and the word "sample" in reasonable sized lettering; further, the spirituous liquor container (1.75L, .750L, .375L) shall remain the property of the distiller representative and may not be left with the mixed beverages permittee; and any 50 milliliter sample containers left with the mixed beverages permittee shall not be sold by the mixed beverages permittee. Products not approved for sale in North Carolina may not be promoted. If a particular product does not have a 50 ml size extension on the price list and one is needed for sample purposes, a case must be special ordered from a local ABC board.

3. Promote their authorized brands of spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverages permittees or spirits representatives. The following limited activities are specifically authorized:
 - a. The sampling or serving of drinks from containers of spirits purchased from local ABC boards when the spirits donated are intended for consumption during the gathering;
 - b. The display of spirits in closed containers and the display of point-of-sale advertising materials;
 - c. The distribution of informational brochures, pamphlets and recipes, relating to spirits;
 - d. The distribution of novelty and specialty items bearing spirits advertising not in excess of \$5.00 in wholesale value; and
 - e. The presentation of film or video on a particular spirits product or category that is essentially educational.
4. Provide to the mixed beverage permittees the following:
 - a. Point-of-Sale advertising materials that bear conspicuous and substantial brand logo advertising matter designed to attract consumer attention to the products of the industry members. Such materials include, but are not limited to posters, place cards, table tents and advertising signs that have no secondary value other than as advertising. Point-of-sale advertising materials may not be customized for a retailer with the retailer's name or logo.
 - b. Retailer Advertising Specialty items that bear conspicuous and substantial brand logo advertising matter. Such materials include, but are not limited to:

Trays, coasters, mats, paper napkins, back bar mats, rail mats, shakers, stirrers, bar caddies, back bar pedestals, and display stands or cases.

Retailer Advertising Specialty items may not be customized for an individual mixed beverages permittee and may not exceed \$50.00 per brand at any one time in any one retail establishment. Retailer Advertising Specialty Items do not include Product Displays such as shelving, glassware, cups, dispensing containers or equipment, or Consumer Specialty Items or Novelties, as those terms are defined in the Commission's Rules at 4 NCAC 2S .1012, 2T .0713(a)(1) and (b)(5).

Photos or drawings of all Retailer Specialty Items shall be submitted electronically to the administrator for review and approval prior to distribution in the market.

- c. Drink menus, table tents and beverage lists, provided they are not printed with the mixed beverages permittee's food menu.

An industry member may not directly or indirectly pay or credit the mixed beverages permittee for using or distributing these materials or for any expense incidental to their use.

D. Prohibited Activities. In addition to North Carolina G.S. 18B-1116 and ABC Commission Rules 4 NCAC 02T.0707 - Inducements; 02T.0708 - Commercial Bribery; and 02T.0711 - Prohibited Trade Practices, as they pertain to industry members; a distiller representative shall not:

1. Sell spirits to any mixed beverages permittee(s), solicit or receive orders for spirits from any mixed beverages permittee, provide or offer to provide cash discounts or cash rebates to any mixed beverages permittee, or negotiate any contract or contract terms for the sale of spirits with a mixed beverages permittee.
2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell spirits to mixed beverages permittees.
3. Provide or offer to provide gifts, entertainment or other things of value to mixed beverages permittees except at conventions, trade association meetings or similar gatherings as permitted in subdivision C.3. or as provided in paragraph C.1., above.
4. Provide or offer to provide any money, services, equipment, furniture, fixtures, barware, supplies, property or other item of value to mixed beverages permittees except as permitted by paragraph C.1. and C. 4., above.
5. Purchase or deliver spirits or other alcoholic beverages for or to mixed beverages permittees or provide any services as inducements to mixed beverages permittees, except that this provision shall not preclude the sale or delivery of wine or beer by a licensed wholesaler.

6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail mixed beverages permittee.
7. Solicit a mixed beverages permittee on any premises other than on the permittee's licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision C.3.
8. Solicit consumers in any manner or purchase patrons of the permittee's alcoholic beverages for the purpose of tasting and promoting its brands while on any mixed beverage licensed premise.
9. Engage in solicitation or promotion of spirits other than as authorized by these guidelines and the Rules of the ABC Commission.

E. Permits. No person shall solicit a mixed beverages permittee without being issued a North Carolina distiller representative permit. To obtain a permit, a person shall:

1. Register with the North Carolina ABC Commission by filing an application on such forms as prescribed by the Commission.
2. Submit with the application a letter of authorization from the manufacturer, brand owner, its duly designated United States agent or North Carolina broker, for each specific brand or brands of spirits which the distiller representative is authorized to represent on behalf of the distiller in North Carolina; and
3. Be an individual at least 21 years of age.

F. Records. A distiller representative shall keep complete and accurate records of any solicitation of mixed beverages permittee(s) for a period of two (2) years, reflecting all expenses incurred by the representative in connection with the solicitation of the sale of all distillers' products and shall, upon request, furnish the North Carolina ABC Commission with a copy of such records.

G. Refusal, Suspension or Revocation of Permits. In accordance with ABC Commission Rule 4 NCAC 2T.0902, the ABC Commission may refuse, suspend or revoke a permit and may embargo a particular code from shipment for any violation of these guidelines, upon notice and hearing as provided in Article 3 of Chapter 150B of the North Carolina General Statutes.

H. Disclaimer. These guidelines may be amended or rescinded by the Commission for good cause at any time. Further, these guidelines will serve as the basis for notice of rulemaking pursuant to the provisions of Chapter 150B of the North Carolina General Statutes, and are subject to modification by amendment or rescission as part of the rulemaking process under the procedural requirements of Chapter 150B.

To provide for the implementation and analysis of the results of the activities authorized by these guidelines, the Commission will suspend enforcement of the provisions of Rule 4 NCAC 2S.1010(a)(1), (5); 2S.1011(e); and 2T .0901(d) and (e). All other rules remain in full force and effect.